

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

June 17, 2008

REG-2008-00022

INITIAL STATEMENT OF REASONS

INTRODUCTION

California Insurance Commissioner Steve Poizner (Commissioner) will hold a public hearing to discuss the proposed addition of section 2359.8 to Title 10, Chapter 5, Subchapter 3, Article 7.1 of the California Code of Regulations. The proposed regulations will implement, interpret and make specific certain provisions of Division 2, Part 6, Chapter 1 of the California Insurance Code, entitled "Title Insurance."

These regulations are authorized by Insurance Code sections 924, 12401.1, 12401.5, 12401.7, 12401.9, 12414.17, 12414.18, 12414.20, 12414.21, 12414.22, and 12414.23 which require regulated entities to collect, maintain and produce data relating to title insurance rates and rating systems and authorize the Commissioner to impose penalties in the event a regulated entity fails to collect, maintain or produce such data.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATIONS

Title insurance and escrow rates, when developed properly, take into account all relevant historical data relating to the expenses associated with the business of title insurance. Examples of such expenses include expenses associated with the title search, examination and underwriting, claims experience, and similar relevant costs which affect title insurance and escrow rates and rating systems. Applicable law establishes that entities involved in conducting the business of title insurance must maintain and disclose sufficient data to permit the Commissioner to effectively monitor title insurance and escrow rates. The Commissioner's ability to consider such data and monitor title and escrow rates is directly related to the Commissioner's duty to protect consumers from excessive, inadequate or unfairly discriminatory rates or rating systems.

While it is assumed that all entities conducting the business of title insurance intend to maintain and share all data relating to rates and rating systems, it is important for the Commissioner to have an established procedure to deal with those entities that do not conduct business in accordance with this assumption. The Commissioner's power to enforce the collection or reporting of data relating to the business of title insurance can be found within a number of statutes in the Insurance Code. This power includes the authority to collect late filing fees and conduct a field examination of a deficient company at the expense of that company. Above all, the Commissioner retains the power to suspend or revoke any license or certificate of authority issued by the Commissioner, if necessary, to ensure the prompt and complete disclosure of information relating to title and escrow rates and rating systems. The proposed regulations,

therefore, are necessary to implement, interpret and make specific the Commissioner's powers as they relate to title and escrow data maintenance, collection and reporting. The specific purpose and necessity of each proposed regulation subsection is set forth below.

Section 2359.8, subsection (a):

The purpose of proposed subsection (a) is to define the scope of the proposed regulations. Insurance Code section 12401.5(a) permits the Commissioner to collect information concerning the "performance of all title insurance entities conducting the business of title insurance in this state." Insurance Code section 12340.3 provides a specific definition of "the business of title insurance." By establishing that the Commissioner's enforcement remedies extend to those entities that conduct the business of title insurance, as defined in section 12340.3, the proposed regulations provide a clear description of the entities to which these regulations will apply. Proposed subsection (a) forecloses a regulated entity from challenging a disciplinary proceeding on the grounds that the proposed regulations do not apply to that entity. Proposed subsection (a) serves to ensure, for example, that the officers of a controlled escrow company understand that their company could be subject to the remedies set forth in this regulation if the Commissioner determines the entity has failed to collect or report data. This subsection, by referencing Insurance Code section 12340.3, explicitly identifies title insurers, controlled escrow companies and underwritten title companies as entities that may be subject to the remedies set forth in these regulations.

Proposed subsection (a) is reasonably necessary to ensure that regulated entities may easily identify and understand whether their operations are subject to proposed section 2359.8.

Section 2359.8, subsection (b):

The purpose of subsection (b) is to identify the kinds of data that are subject to proposed section 2359.8. Subsection (b) will implement, interpret, and make specific the applicability of these enforcement remedies to the categories of data contemplated in Articles 5.5 and 6.9 of Chapter 1, Part 6, Division 2 of the Insurance Code (Articles 5.5 and 6.9).

For example, Insurance Code section 12401.5 requires title insurers, underwritten title companies and controlled escrow companies to maintain and report to the Commissioner statistical plan data relating to all financial experience and other information relevant to the rating systems used by such entities to conduct the business of title insurance. Proposed subsection (b) will implement, interpret, and make specific the availability of the Commissioner's enforcement powers to ensure that entities comply with the statistical plan reporting requirements of Insurance Code section 12401.5.

Similarly, Insurance Code section 12414.22 permits the Commissioner to review the books, records and accounts, documents or agreements governing a company's method of operation, together with all data, statistics and information of every kind and character that is collected or considered in the conduct of that company's operations. Proposed subsection (b) notifies regulated entities of the kinds of data that are subject to the Commissioner's examination powers and implements, interprets and makes specific the ability of the Commissioner to apply the

remedies set forth in proposed subsection (c) towards those entities that fail to collect or report such data.

Because proposed subsection (b) limits the application of its provisions to Articles 5.5 and 6.9 of the Insurance Code, the proposed regulations will serve to clearly identify the kinds of books, records and related information that, when unreported or uncollected, may result in the application of these enforcement remedies. Subsection (b) is reasonably necessary to ensure that regulated entities understand the categories of records that will be subject to the Commissioner's enforcement powers listed in proposed subsection (c).

Section 2359.8, subsection (c):

Proposed subsection (c) identifies three enforcement tools that the Commissioner may utilize when a regulated entity fails to collect or report the materials referenced in proposed subsection (b). The purpose of proposed subsection (c) is to notify regulated entities that their failure to report or collect data that is required to be reported or collected in accordance with Articles 5.5 and 6.9 of the Insurance Code may result in one or more of three consequences: 1) the revocation or suspension of any license or certificate of authority issued by the Commissioner, 2) an examination of the entity's records, at the company's expense, for the purpose of compiling and collecting the data that has not been collected or reported by the entity in accordance with Articles 5.5 and 6.9, and 3) the assessment of a late filing fee for failure to collect or report such data within the timeframe required by the Commissioner and established by law.

Title insurers and other entities that conduct the business of title insurance have estimated that compliance with a detailed statistical plan, such as the statistical plan currently set forth in section 2356.1 et seq., will cost anywhere from \$50 million to \$270 million dollars per company. The Insurance Code provides the Commissioner with the authority to impose a fine of no more than \$100 for a regulated entity's failure to comply with a non-willful violation or \$5,000 for a willful violation of a final order of the Commissioner. Thus, from a pure cost-benefit approach to regulatory compliance, a hypothetically unscrupulous company could conceivably decide that payment of a maximum \$1,000 fine for defying a final order of the Commissioner would be preferable to collecting and reporting the data required by the regulations. Proposed subsection (c) will ensure that additional, and arguably more effective, remedies are at the Commissioner's disposal in the event an entity seeks to forego the costs of collecting and reporting data necessary for the Commissioner's review of rates.

The use of suspension or revocation serves to make cost-prohibitive a hypothetical company's outright refusal to provide data to the Commissioner. As an additional cost-prohibitive method to ensure that a company collects and reports data in a cost-effective manner, proposed subsection (c) establishes that the Commissioner's rating examination authority may be used, in appropriate cases, to physically collect and report data that a company fails to collect or report on its own. Because Insurance Code section 12414.23 authorizes the Commissioner to charge the company for the cost of conducting the rating examination, a given regulated entity will be deterred from attempting to avoid the collection or reporting of data at the company's expense. Finally, in order to remove any doubt about the applicability of the late filing fee provision of

Insurance Code section 924 to title and escrow data, proposed subsection (c) makes specific mention of that section and its inclusion within the Commissioner's data collection remedies.

Proposed subsection (c) is reasonably necessary to implement, interpret, and make specific the rule that the Commissioner's examination, license revocation and late filing fee authority will be utilized as necessary to ensure compliance with the data collection and reporting requirements established by the Commissioner's statistical plan or established by other collection and reporting requirements set forth in Articles 5.5 and 6.9.

Section 2359.8, subsection (d):

Proposed subsection (d) implements, interprets, and makes specific the language in Insurance Code section 924. The purpose of subsection (d) is to inform regulated entities that the terms "statements or stipulations required by this code" include the information that is required to be reported to the Commissioner pursuant to Articles 5.5 and 6.9 of the Insurance Code.

Subsection (d) is reasonably necessary to make clear to affected entities conducting the business of title insurance that the Commissioner's late filing fee will be utilized to ensure compliance with the Commissioner's statistical plan reporting and other reporting requirements that are authorized by Articles 5.5 and 6.9.

Section 2359.8, subsection (e):

Proposed subsection (e) notifies the reader that the Commissioner may take other action in addition to the actions permitted by proposed section 2359.8 in order to ensure compliance with the data recording and reporting requirements established by applicable law. Proposed regulation subsection (e) prevents a misinterpretation of the regulations vis-à-vis the principle of *expressio unius est exclusio alterius* (the express mention of one thing implicitly excludes all others). Because proposed section 2359.8 is not intended to operate as the exclusive means by which the Commissioner may compel regulated entities to collect and report title and escrow data, subsection (e) ensures that the Commissioner's intention in this regard is fully understood.

While the Commissioner intends to use the enforcement remedies set forth in proposed section 2359.8 as the primary means to ensure that regulated entities will comply with title insurance related data collection and reporting requirements, this subsection is reasonably necessary to reserve the Commissioner's right to pursue other legally authorized means of enforcement when he deems it necessary to do so.

SPECIFIC ACTIONS, PROCEDURES, TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations would not mandate the use of specific technologies or equipment.

REASONABLE ALTERNATIVES

The Commissioner has identified no reasonable alternatives to the presently proposed regulations. The Commissioner has determined that no reasonable alternatives exist to carry out the purpose for which the regulations are proposed. Performance standards were considered but

were rejected as an unreasonable and impracticable alternative. Nevertheless, the Commissioner invites public comments on the proposed changes and reasonable alternatives which would be as effective to carry out the proposed changes.

ECONOMIC IMPACT ON SMALL BUSINESS

The Commissioner has not identified any alternatives that would lessen any adverse impact on small businesses. Nor have any such alternatives otherwise been identified and brought to the attention of the Commissioner that would lessen any impact on small business. Nevertheless, the Commissioner invites public comments on the proposed changes and reasonable alternatives which would be as effective to carry out the proposed changes. To the extent that the proposed regulations affect insurance companies, or affect escrow or title-related services where the annual gross receipts for the business exceed two million dollars, the proposed regulations do not affect small business. (See Gov. Code § 11342.610.)

FINDING OF POSSIBLE SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The proposed regulations establish remedies that the Commissioner may use to ensure the proper collection and reporting of rate and rating system data to the Commissioner in the established format. The Commissioner recognizes that the proposed regulations may have a significant adverse economic impact on businesses that fail to collect and report data in the manner prescribed by the Commissioner.

Title insurers, underwritten title companies and controlled escrow companies are already required to report financial data to the Commissioner. Existing regulations identify uniform standards and categories of data for collection and reporting in the future. While some entities engaged in the business of title insurance can expect some economic impact due to the remedies established by the proposed regulations, the economic impact of the proposed regulations is entirely avoidable and will depend upon a given entity's cooperation in collecting, maintaining and sharing data with the Commissioner.

The Commissioner, therefore, has determined that the proposed regulations may have a significant adverse economic impact on businesses subject to the proposed regulations.